

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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|----------------------------|---|-----------------------------------|
| In re: |) | Chapter 11 |
| |) | |
| SUPERMEDIA LLC, |) | Case No. 13-10546(KG) |
| |) | |
| Reorganized Debtor. |) | |
| _____ |) | |
| SUPERMEDIA LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Adv. Proc. No. 15-50044(KG) |
| |) | |
| YELLOW PAGES PHOTOS, INC., |) | |
| |) | |
| Defendant. |) | Re: Dkt Nos. 171 & 180 |
| _____ |) | |

OPINION

In this tumultuous case and adversary proceeding, the time has come for a final decision on the merits following trial. As explained below, matters took a serious turn based upon facts discovered and arguments made by new lead counsel for SuperMedia LLC (“SuperMedia”) – facts and arguments which changed the complexion of the issues for the Court to decide and the outcome of the case.

BACKGROUND¹

On November 12, 2001, Yellow Pages Photos, Inc., (“Former YPPI”), now known as AdMedia Systems, Inc. (“AdMedia”), and Verizon Directories Corp. (“Verizon

¹ A number of facts in this Opinion are repetition of the facts which appeared in the Court’s Memorandum Opinion, dated December 29, 2014 (Lead Case - D.I. 220) and the Memorandum Opinion on the cross-motions for summary judgment, dated October 27, 2015 (Adv. - D.I. 115).

Directories”) entered into a Service Contractor Agreement (the “Agreement”).² AdMedia agreed to provide Verizon Directories with 100 CD’s each containing 50 images (the “Licensed Images”) for Verizon Directories’ use in accordance with an End User License Agreement (the “License”) which was attached to the Agreement.³ Verizon Directories paid AdMedia \$660,000 for the delivered Licensed Images.⁴ The Agreement contains, *inter alia*, an anti-assignment clause providing that Former YPPI, now AdMedia, could not “assign its rights or delegate its duties “without Verizon Directories’ prior written consent.”⁵

In 2006, Verizon Directories changed its name to “Idearc Media Corp.” (“Idearc”).⁶ On November 3, 2006, former YPPI changed its name to “AdMedia Systems, Inc.” Trent Moore, AdMedia’s principal, incorporated a new Florida corporation named “Yellow Pages Photos, Inc.”⁷ In 2007, YPPI received from the Register of Copyrights copyright registrations for the Licensed Images.⁸ AdMedia assigned its copyrights in the Licensed Images to YPPI.⁹

² Pretrial Order (“PTO”), dated November 6, 2015 ¶ 2. Adv. - D.I. 138.

³ *Id.*, ¶ 3.

⁴ *Id.*, ¶ 5.

⁵ *Id.*, ¶ 6.

⁶ *Id.*, ¶ 8.

⁷ The Court will refer to the new company named “Yellow Pages Photos, Inc.” as “YPPI.” It should be noted that although YPPI made reference to the change in a footnote to the brief following the Liability Trial, the Court did not appreciate the significance of the change and in its Memorandum Opinion on Yellow Pages Photos’ Inc.’s Amended Motion for Allowance and Payment of Administrative Expense, the Court’s references to YPPI were actually to Former YPPI. See the Memorandum Opinion which accompanies this Opinion in which the Court denies YPPI’s motion to amend its proof of claim to add AdMedia.

⁸ PTO, ¶ 13, Ex. 1.

⁹ *Id.*, ¶ 12.

On March 31, 2009, Idearc filed a voluntary Chapter 11 petition in the Bankruptcy Court for the Northern District of Texas.¹⁰ Then, on April 21, 2009, Idearc's claims and noticing agent served YPPI with notice of the bar date for claims of August 10, 2009.¹¹ Thereafter, on September 21, 2009, the noticing and claims agent sent a second notice to YPPI that it was a party to an executory contract with Idearc, that the contract was being assumed and how the cure amount could be found.¹² The proposed cure amount for YPPI was \$0.00, and YPPI did not object.¹³ The bankruptcy court confirmed Idearc's plan on December 22, 2009, including a provision that the cure amount was binding.¹⁴ Idearc emerged from bankruptcy as SuperMedia, LLC.

On February 16, 2010, YPPI brought a lawsuit in the United States District Court for the Middle District of Florida against User-Friendly Phone Book, LLC and ASEC Group LLC. In the course of the lawsuit, YPPI learned that ASEC received copies of the Licensed Images from SuperMedia. Therefore, on September 24, 2010, YPPI sent a letter to Super Media regarding SuperMedia's breaches and infringements.¹⁵

On March 18, 2013, SuperMedia and affiliates filed for bankruptcy under chapter 11 in the Court. YPPI immediately sought discovery under Rule 2004. On May 30, 2013, after SuperMedia had emerged from its prepackaged bankruptcy, YPPI filed its proof of claim, as later amended, and Motion for Allowance and Payment of Administrative

¹⁰ *Id.*, ¶ 15.

¹¹ Trial., Ex. 563, ¶ 10.

¹² *Id.*, ¶ 14.

¹³ *Id.*, ¶¶ 14, 18, 20.

¹⁴ *Id.*, ¶ 21.

¹⁵ Trial., Ex. 27.

Expense Claim,¹⁶ YPPI alleged that SuperMedia violated the transfer restriction in the License and infringed YPPI's copyrights.

The Court conducted a trial on the Motion for Administrative Expense on April 9, 10 and 11, 2014 (the "Liability Trial").¹⁷ Because of YPPI's concern that SuperMedia had neglected to provide all of the discovery YPPI had requested, YPPI asked the Court to bifurcate trial¹⁸, which request the Court granted, trying only liability in the Liability Trial.

The Liability Post-Trial Opinion

On December 29, 2014, the Court issued its Post-Trial Opinion on Yellow Pages Photos, Inc.'s Amended Motion for Allowance and Payment of Administrative Expense (the "Liability Opinion").¹⁹ The Liability Opinion made it clear that the Court fully accepted YPPI's evidence at the trial that Super Media had breached the License pre-Petition. The Court found that SuperMedia was not entitled to transfer YPPI's images and had done so, but because the transfers were accomplished pre-Petition, the Court had to deny the administrative claim. In the Liability Opinion, the Court discussed the breaches of the License and the copyright infringement at length and concluded that the breaches and infringement had occurred pre-Petition. Specifically, the Court found that SuperMedia had wrongfully transferred the Licensed Images to Tata, ASEC, AMDOCS, MPS, ASEC Asia and ASEC India.²⁰ The Court found further breaches by transfers from

¹⁶ Case 13-10545 - D.I. 213.

¹⁷ Lead Case - D.I. 116, 134-136.

¹⁸ Lead Case - D.I. 93.

¹⁹ Adv. - D.I. 220.

²⁰ Liability Opinion, page 35.

SuperMedia to Web.com, Hostopia, Facebook and Google+.²¹ The Court found that the transfers were willful.²²

However, as SuperMedia made clear in its Motion to Amend (discussed below), the pre-Petition period was not at issue in the Liability Trial. What was at issue was the administrative claim period, *i.e.*, the 43 days between the date of SuperMedia's bankruptcy petition (March 18, 2013) and the effective date of its confirmed plan (April 30, 2013). The Court therefore concluded that its rulings on pre-petition actions were not binding.

SuperMedia Adversary Proceeding

SuperMedia commenced an adversary proceeding on January 12, 2015. In the adversary proceeding, SuperMedia sought a declaration that in the pre-Petition period SuperMedia had neither breached the License nor infringed the copyrights.²³

Then, on September 4, 2015, SuperMedia filed a Second Amended Complaint²⁴ reflecting the following allegations:

1. Former YPPI changed its name to AdMedia, and Mr. Moore formed a new company, YPPI. AdMedia assigned its copyrights to the Licensed Images to the newly formed YPPI.²⁵

²¹ Liability Opinion, pages 37-39.

²² Liability Opinion, pages 45-46.

²³ Adv. – D.I. 1.

²⁴ Adv. – D.I. 80.

²⁵ Second Amended Complaint, ¶ 8.

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